

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1843

Introduced by Assembly Members Jones and Gordon

February 18, 2014

An act to amend ~~Section~~ *Sections 3025.5 and 3111* of the Family Code, relating to child custody.

LEGISLATIVE COUNSEL'S DIGEST

AB 1843, as amended, Jones. Child custody evaluations: confidentiality.

~~Under existing law, reports containing psychological evaluations of a child or recommendations regarding custody of, or visitation with, a child, that are submitted to the court in a proceeding involving child custody or visitation, are required to be kept in the confidential portion of court files, and may be made available only to specified persons.~~

~~This bill would make a technical, nonsubstantive change to that provision.~~

Existing law authorizes a court, in any contested child custody or visitation rights proceeding, to appoint a child custody evaluator to conduct a child custody evaluation, as specified, if the court determines it is in the best interests of the child. Existing law requires the child custody evaluator, if directed by the court, to file a written confidential report on his or her evaluation at least 10 days before any hearing regarding the custody of the child with the clerk of the court, as specified. Existing law requires this report to be served on the parties or their attorneys, and any other counsel appointed for the child. Existing law otherwise prohibits the disclosure of the report, except in certain probate guardianship proceedings, as specified.

Existing law requires the information from a report containing psychological evaluations of a child or recommendations regarding custody or visitation submitted to the court in any proceeding involving child custody or visitation rights to be contained in a document that is to be placed in the confidential portion of the court file. Existing law applies this requirement to, among other things, the written confidential report described above, child custody or visitation recommendations made to the court pursuant to mediation proceedings, and a written statement of issues and contentions put forth by a child's appointed counsel. Existing law prohibits these reports and recommendations from being disclosed, except to specified persons, including, among others, a party to the proceeding or his or her attorney, a federal or state law enforcement officer, a court employee acting within the scope of his or her duties, a child's appointed counsel, or any other person upon order of the court for good cause.

The bill would make a clarifying change to authorize the child custody evaluator's written confidential report to be disclosed pursuant to the provisions described above. The bill would delete an obsolete provision relating to the written statement of issues and contentions put forth by a child's appointed counsel.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 3025.5 of the Family Code is amended
- 2 to read:
- 3 3025.5. In a proceeding involving child custody or visitation
- 4 rights, if a report containing psychological evaluations of a child
- 5 or recommendations regarding custody of, or visitation with, a
- 6 child is submitted to the court, including, but not limited to, a
- 7 report created pursuant to Chapter 6 (commencing with Section
- 8 3110) of this ~~part, part and~~ a recommendation made to the court
- 9 pursuant to Section 3183, ~~and a written statement of issues and~~
- 10 ~~contentions pursuant to subdivision (b) of Section 3151,~~ that
- 11 information shall be contained in a document that shall be placed
- 12 in the confidential portion of the court file of the proceeding, and
- 13 may not be disclosed, except to the following persons:
- 14 (a) A party to the proceeding and his or her attorney.

1 (b) A federal or state law enforcement officer, judicial officer,
2 court employee, or family court facilitator of the superior court of
3 the county in which the action was filed, or an employee or agent
4 of that facilitator, acting within the scope of his or her duties.

5 (c) Counsel appointed for the child pursuant to Section 3150.

6 (d) Any other person upon order of the court for good cause.

7 *SEC. 2. Section 3111 of the Family Code is amended to read:*

8 3111. (a) In any contested proceeding involving child custody
9 or visitation rights, the court may appoint a child custody evaluator
10 to conduct a child custody evaluation in cases where the court
11 determines it is in the best interests of the child. The child custody
12 evaluation shall be conducted in accordance with the standards
13 adopted by the Judicial Council pursuant to Section 3117, and all
14 other standards adopted by the Judicial Council regarding child
15 custody evaluations. If directed by the court, the court-appointed
16 child custody evaluator shall file a written confidential report on
17 his or her evaluation. At least 10 days before any hearing regarding
18 custody of the child, the report shall be filed with the clerk of the
19 court in which the custody hearing will be conducted and served
20 on the parties or their attorneys, and any other counsel appointed
21 for the child pursuant to Section 3150. The report may be
22 considered by the court.

23 (b) The report shall not be made available other than as provided
24 in subdivision (a) or *Section 3025.5*, or as described in Section
25 204 of the Welfare and Institutions Code or Section 1514.5 of the
26 Probate Code. Any information obtained from access to a juvenile
27 court case file, as defined in subdivision (e) of Section 827 of the
28 Welfare and Institutions Code, is confidential and shall only be
29 disseminated as provided by paragraph (4) of subdivision (a) of
30 Section 827 of the Welfare and Institutions Code.

31 (c) The report may be received in evidence on stipulation of all
32 interested parties and is competent evidence as to all matters
33 contained in the report.

34 (d) If the court determines that an unwarranted disclosure of a
35 written confidential report has been made, the court may impose
36 a monetary sanction against the disclosing party. The sanction
37 shall be in an amount sufficient to deter repetition of the conduct,
38 and may include reasonable attorney's fees, costs incurred, or both,
39 unless the court finds that the disclosing party acted with substantial
40 justification or that other circumstances make the imposition of

1 the sanction unjust. The court shall not impose a sanction pursuant
2 to this subdivision that imposes an unreasonable financial burden
3 on the party against whom the sanction is imposed. This
4 subdivision shall become operative on January 1, 2010.

5 (e) The Judicial Council shall, by January 1, 2010, do the
6 following:

7 (1) Adopt a form to be served with every child custody
8 evaluation report that informs the report recipient of the
9 confidentiality of the report and the potential consequences for the
10 unwarranted disclosure of the report.

11 (2) Adopt a rule of court to require that, when a court-ordered
12 child custody evaluation report is served on the parties, the form
13 specified in paragraph (1) shall be included with the report.

14 (f) For purposes of this section, a disclosure is unwarranted if
15 it is done either recklessly or maliciously, and is not in the best
16 interests of the child.